# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## SPECIAL CIVIL APPLICATION No. 1382 of 2004

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE AKIL KURESHI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**MAKWANA KALUBHAI SHIVABHAI - Petitioner(s)**

**Versus**

**DEPUTY LABOUR COMMISSIONER & 2 - Respondent(s)**

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**Appearance :**

MR PREMAL S RACHH for Petitioner(s) : 1,
MR. PD BHATE, AGP for Respondent(s) : 1 - 2.
RULE SERVED for Respondent(s) : 1 - 3.

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**CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI**

**Date : 22/09/2005**

**ORAL JUDGMENT**

1.In the present petition, the petitioner has challenged the legality of an Order dated 19.10.2002 passed by the Assistant Labour Commissioner, Bhavnagar.

2.Short facts leading to the present petition are that the petitioner was employed by the respondent No. 3 as a Sweeper. It is his case that he was terminated w.e.f. 24.10.1997 without any notice. The petitioner came to know that new appointments have been made by respondent No. 3 instead of recalling the petitioner. The petitioner therefore issued a demand notice dated 13.06.2002, copy of which is tendered by the learned Advocate for the petitioner, which is taken on record. Respondent No. 2, i.e. the Conciliation Officer refused to take the matter into conciliation and communicated the same to the petitioner by his impugned Order dated 19.10.2002. In the said order, it was stated that the request is made by the petitioner after much delay and the matter was referred to the Deputy Labour Commissioner for condonation of delay. However, Deputy Labour Commissioner did not find it appropriate to condone the delay. The petitioner once again approached the authorities by his complaint dated 22.03.2003. This was replied to by the respondent No. 2 stating that once the request of the petitioner has been turned down by Order dated 19.10.2002, there is no scope for reopening the issue. The petitioner has therefore filed the present petition, challenging the

order passed by respondent No. 2.

3. From the above recording of events, it can be seen that attempt on the part of the petitioner to raise an industrial dispute about his termination and subsequent non-engagement was aborted by the respondent No. 2 on the ground of delay. Respondent No. 2, was acting as a Conciliation Officer. It was therefore his duty to bring about a conciliation between the parties and to submit his report if the conciliation proceedings ended in a failure; to the Government. It is difficult to appreciate the stand of the respondent No. 2 that the matter was referred to the Deputy Labour Commissioner for condonation of delay. Even under the provisions of Industrial Disputes Act, respondent No. 2 being a conciliation officer, it was his duty to conciliate between the parties. In any case, the petitioner had approached the authorities with a case that he was illegally terminated and that even after his termination, new persons were engaged and the petitioner was not re-called. Upon coming to know about the engagement of new persons, he had approached the employer and thereafter the authorities, under the Industrial Disputes Act. In view of this background,

it was not open for the respondent No. 2 to refuse to conciliate and make appropriate report upon conclusion of conciliation proceedings.

4. In a decision of **Hitendra Vrajlal Trivedi Vs. Deputy Labour Commissioner, reported in 2004(3) GLH(U.J.)1**, after considering the several decisions on these points, this Court had found that the appropriate Government would have limited jurisdiction in refusing to refer a dispute for adjudication. Observations made in the earlier decisions, wherein the Conciliation Officer had refused to conciliate were also noted. It was observed that while considering the question whether industrial dispute is referred for adjudication or not under Section 10 of the Industrial Disputes Act, the Appropriate Government cannot adjudicate the issues and decide the lis between the parties. It was observed that if the appropriate Government cannot enter into the merits of the dispute sought to be raised by the workman, can a conciliation officer exercise such a power is the question and the answer has to be obviously in the negative.

5. From the above observations, it can be seen that the

respondent No. 2 was refusing to proceed further with the conciliation and the impugned order dated 19.10.2002 is required to be quashed and set aside. Respondent Nos. 1 & 2 are directed to proceed further with the conciliation proceedings and make an appropriate report upon conclusion of the same. On the basis of the report of the Conciliation Officer, appropriate Government will take a decision regarding referring the dispute for adjudication in accordance with law.

6. In the result, the petition is allowed. Rule made absolute to the above extent. No orders as to costs.

**(Akil Kureshi, J.)**

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